

occurred. As applied in merger analysis, an event window should identify the period of time over which the market's estimate of the probability of the merger increased substantially. See id. at 3-4. As explained by Drs. Warren-Boulton and Dalkir, simple event studies that pick a single, brief event window suffer from a number of shortcomings that make them less likely to be able to measure accurately the market's actual assessment of the merger.

By utilizing a complete time series to calculate a continuous probability of the merger, Drs. Warren-Boulton and Dalkir show that the net change of 10 percent in the Carlton/Sider two-day window -- relative to the much larger changes in probability that occurred over the wider time period (September 15, 1999 to February 19, 2000) -- could not have reliably captured a significant event.⁹⁶ The result is that any effort to correlate abnormal returns to rivals to the merger will be unreliable. Id. at 8. Accordingly, the Carlton/Sider analysis reveals nothing about the stock market's belief about the likely effects of the proposed merger because it essentially fails to look at the stock market's assessment of the merger. Id. at 9.

Drs. Warren-Boulton and Dalkir conducted an event study using a continuous time series and a regression analysis that properly controlled for market-wide movements as well other non-merger related events occurring over the relevant time period. This analysis eviscerates SBC's hypothesis that the movement in the stock market somehow reflected an expectation that the merger will raise prices for long distance. Id. at 9-14.

⁹⁶ Much more dramatic changes in merger probability are evidenced over the wider time period, for example, the probability rose by 80 percentage points between September 15, 1999, and October 27, 1999, and fell by 44 points between October 27 and January 11. Warren-Boulton/Dalkir Decl., Fig. 1. In fact, because the two-day change chosen by Carlton/Sider actually reflects a decrease in probability by 7 points on October 5 and an increase of 17 percentage points on October 6, it is not appropriate to lump them together in any event.

Drs. Warren-Boulton and Dalkir also explain why CWA is wrong in asserting that the existence of a premium in the price MCI WorldCom is paying for Sprint is evidence that the merger is anticompetitive.⁹⁷ The relevant inquiry is the increase in the combined share value of both firms, not simply the increase in the stock price of the acquired firm. As Drs. Warren-Boulton and Dalkir explain, it should not be surprising that the combined share value is increased by the merger, indeed this is the relationship one should expect unless the market thinks the merger is a mistake. Id. at 15.

CWA is simply wrong when it supposes that increased shareholder value necessarily means that consumers will not see the benefits of the synergies. To the contrary, because the merger provides efficiencies and strategic gains to the merged entity's competitive efforts, including local entry, consumers are indeed likely to benefit. Id. at 14-15. In other words, contrary to CWA's assertions, the increase in shareholder value for the combined firm reflects the market's solid belief that the merged WorldCom will be an even more robust competitor, an event that the Commission should welcome.

III. The Merger Will Promote Local Competition.

As explained in the attached Declaration of Daniel Kelley ("Kelley Decl.") (attached as Exhibit 4), "the single largest public policy issue in telecommunications is, and always has been, the incumbent carrier monopoly over the last mile." Kelley Decl. ¶ 1. Opponents have sought to divert the Commission's attention away from this merger's tangible benefits to resolving this fundamental problem, but the Commission need only consider the principal source of this opposition: SBC and GTE. These incumbents expressed concern for the supposed loss of local

⁹⁷ Under this calculus, virtually all mergers would be anticompetitive.

competition between MCI WorldCom and Sprint and the ability of the merged parties to achieve local synergies to compete more effectively with incumbent LECs is a bit ironic even if not quite sincere. Their very opposition in fact suggests their underlying fear that we are right.

As discussed in detail below, the opponents' arguments regarding a loss of competition is simply wrong as a matter of law and fact. To the contrary, one of the principal benefits of the merger is the acceleration of local competitive entry, and this benefit has striking consumer welfare implications. As explained by Dr. Kelley, current ILEC revenues from regulated services exceed forward-looking economic costs by \$30 billion. Dr. Kelley estimates that accelerating the advent of full local competition by a mere two years (from, e.g., 2010 to 2008) would result in lower consumer prices worth a present discounted value of approximately \$17.5 billion.⁹⁸ The benefits of the merger are thus large and tangible.

A. The Merger Will Not Effectuate A Loss Of Actual Or Potential Competition For Local Services.

Opponents argue that the merger would reduce competition for local services because it will eliminate competition between the merging parties for these services. See, e.g., SBC at 47-50; Texas OPUC at 4-5. They claim that there will be an (actual or potential) competitive loss in: (1) Sprint ILEC service areas where MCI WorldCom has a CLEC presence; and (2) in areas where both merger parties have planned or actual CLEC operations. Neither of these claims has merit.

⁹⁸ Kelley Decl. ¶¶ 90-91. This savings results from both a redistribution of monopoly overcharges from ILECs to consumers and efficiencies resulting from ILECs being forced by competition to reduce costs to competitive levels. Id.

1. The overlap between MCI WorldCom CLEC and Sprint ILEC service areas is de minimis.

First, there is a very simple answer to the claimed competitive loss in those areas where a Sprint ILEC serves the same area in which MCI WorldCom has a CLEC presence: the extent of horizontal overlap between Sprint ILECs and MCI WorldCom's CLEC activity is de minimis. The only area in which MCI WorldCom local facilities extend into a Sprint ILEC serving area is in suburban Orlando, Florida, where MCI WorldCom is collocated in four Sprint central offices. There are numerous other CLECs serving the Orlando area, including BellSouth, Excel Link, Time Warner Telecom, Hyperion, Intermedia, and Teligent. See "Competition in Telecommunications Markets in Florida" at 38-39, 52, 56 (Fla. PSC Dec. 1999) (seventeen CLECs currently provide local service in Orlando, including nine that serve residential customers). The only area in which MCI WorldCom CLEC facilities are adjacent to a Sprint ILEC serving area is in Raleigh, North Carolina, where MCI WorldCom is collocated in BellSouth central offices. Again, numerous other CLECs serve this area. MCI WorldCom has no interconnection agreements or collocations in or close to any other Sprint ILEC serving areas. There is simply no basis for holding up this merger based upon this insignificant "overlap" between the merging parties.

2. The loss of potential competition between the merging parties' CLEC efforts is not competitively significant.

Second, opponents argue a loss of potential competition in the 93% of the United States not served by a Sprint ILEC. They recite without consideration to substance the Commission's analyses in the Bell Atlantic/NYNEX Order and the SBC/Ameritech Order, which had identified AT&T, MCI WorldCom and Sprint as "most significant potential entrants" in the provision of local exchange and exchange access services to mass market customers. Opponents argue that

the merger will thus eliminate one of a few "most significant potential entrants" for local mass market services.

a. The concerns for loss of potential competition in the large ILEC mergers do not apply here.

SBC's citation to the Commission's analysis to RBOC mergers fails to account for a fundamental difference between the instant Application and those raised by the RBOC mergers. In both of the orders cited by SBC, the Commission sought to assess the loss of potential competition between a potential entrant and the incumbent monopoly. In marked contrast, the instant merger proposes to consolidate the operations of two new (or potential) entrants.

Any focus on the loss of competition between MCI WorldCom and Sprint as "competing" CLECs would be at best myopic, as it ignores the dominance of the RBOCs in their respective regions. This source of persisting market power eclipses any concern about fledgling competitors joining forces. The local markets are virtually all characterized by a dominant ILEC with only small inroads (if any) by a number of new entrants. The key to breaking these local monopolies lies in strengthening these new entrants.

The fundamental question in potential competition analysis is whether the merger eliminates the "possibility of entry. . . in a more procompetitive manner." 1984 Merger Guidelines, 49 Fed. Reg. 26823, § 4.112 (1984). Given the fact that the merger creates a combined firm significantly better able to withstand the large ILECs' continued resistance to competition in their markets, see discussion Section III.B. infra, the minimal potential overlap between the merged parties is simply inconsequential. In other words, the merger actually offers the "more procompetitive" means of entry.

b. The Commission's analysis should include the out-of-region local entry of the large ILECs.

The Commission has expressed optimism that SBC and possibly other large ILECs may become one of the "most significant market participants" outside their monopoly territories. Indeed, it was the prospect of actualizing this RBOC out-of-region potential that in part prompted Commission approval of the largest ILEC merger to date, SBC/Ameritech. SBC/Ameritech Order ¶ 439. Bell Atlantic and GTE have offered similar statements about out-of-region entry in the context of their merger application proceeding.⁹⁹ Given the Commission's apparent acceptance of these RBOC commitments in other proceedings, the FCC should include these RBOCs among the list of "most significant market participants" for purposes of analyzing the MCI WorldCom/Sprint merger as well.

c. The merger will not reduce facilities-based competition in local markets.

Sprint's CLEC entry plans without the merger do not involve national facilities-based entry beyond MMDS. Sprint's CLEC plans -- centered on its Integrated On Demand Network (ION) -- rely upon a combined use of resale, UNE-Platform ("UNE-P"), and UNE loops ("UNE-L"), along with collocation of DSL modems in ILEC central offices. See generally Affidavit of Kevin E. Brauer, Applications of Ameritech Corp. and SBC Communications Inc. for Consent to Transfer Control, CC Dkt. No. 98-141 (filed Oct. 15, 1998). In other words, Sprint ION is, without the merger with MCI WorldCom, solely dependent upon incumbent monopoly facilities and inputs. A priori, there is no significant loss to local facilities-based competition from the proposed

⁹⁹ Public Notice, DA 00-165, CC Dkt. 98-184 (rel. Jan 31, 2000) (seeking comment on proposed merger conditions).

merger. Instead, by enabling Sprint to acquire access to MCI WorldCom's competitive facilities and inputs, there is the prospect for strengthened local competitive entry by the combined firm.

Sprint's CLEC efforts other than Sprint ION have occurred in California, Florida, and most recently New York. The attempt to enter California involved only resale and, due to its unprofitability, was halted two years ago, leaving only a few thousand grandfathered customers still being served. In Florida, a division of Sprint long distance attempted a small entry effort into BellSouth territory in Orlando; that effort has remained limited with no intention to expand. The New York effort began only in the last few months, and entails only resale of Bell Atlantic's local service with the intention to evolve to UNE-P.¹⁰⁰

Certainly there is no sound policy basis for delaying the merger simply to preserve potential competition between one CLEC with limited facilities and another CLEC operating solely based on resale or UNEs. The barriers to UNE-P or resale CLEC entry derive exclusively from the incumbent ILEC. Developments in the past year demonstrate that non-facilities-based competition can quickly occur once the BOC undertakes and fulfills its market-opening obligations. The Commission observed more competitive entry in New York, for example, in the context of considering Bell Atlantic's Section 271 application, in large part due to the availability

¹⁰⁰ The New York Attorney General's comments could be interpreted to suggest that Sprint has an operational local switch in Manhattan; that switch will not be operational for several months.

SBC also argues that the merger is problematic in that Sprint would have entered on its own through Sprint ILECs extending into adjacent territories. SBC at 49-50. As discussed above, Sprint's competitive efforts have centered around Sprint ION in order to launch a national CLEC effort rather than focusing on specific areas adjacent to Sprint ILEC service areas. As described in the Application and Dr. Kelley's Declaration, the merger will facilitate the national CLEC plans of the combined firm.

of UNE-P in that state. New York Order ¶¶ 13-14 & n.21. If the Commission's UNE Remand Order is fully implemented and obeyed by the RBOCs, additional entry by CLECs, especially smaller CLECs, dependent on UNEs for initial entry will be more feasible and observable as well.

B. The Merger Will Produce Tangible And Merger-Specific Benefits For Local Competitive Entry.

Far from threatening local competition, then, the merger will actually serve to advance these efforts. The merger substantially accelerates and makes entry more efficient by the combined firm. In allowing the combined firm to accelerate the deployment of local facilities independent of the incumbent telephone and cable companies, a third source of nationally-based facilities-based entry is enabled.¹⁰¹ The addition of another facilities-based competitor predictably will lead to additional entry and enhanced competitive performance by all market participants. It improves the likelihood that none of the facilities-based local networks will try to exclude others by impeding access to their networks by third parties who intend to use these networks for resale or value-added services. Unless MMDS is allowed to reach its full potential, consumers may be limited to a choice of only two facilities-based local competitors.

The means by which the merger facilitates local entry are discussed at length in the Application, and these means are explicated further in the following section and in the analysis provided by Dr. Kelley. This anticipated gain in local competition outweighs any makeweight

¹⁰¹ There have been some limited facilities-based strategies pursued by smaller CLECs to serve mass markets in discrete local areas. Some companies with their own loops, like RCN Corporation, with its Starpower service here in the District of Columbia, are directly targeting residential users. See Starpower, "Availability" (visited Mar. 13, 2000) <www.starpower.net/availability/index/.html>. Some DSL-oriented companies are leasing UNE loops on a city-by-city basis as well. These are targeted efforts, however, unlike the national strategies of AT&T and its cable affiliates, the large ILECs, and the MMDS plan of MCI WorldCom and Sprint.

concerns for the loss of potential competition between two non-monopoly players.¹⁰² And given that the benefits of increased local competition were found to outweigh anticompetitive concerns in the ILEC mergers (where a monopolist was acquiring a potential competitor),¹⁰³ the far more promising prospects for local entry in this case must certainly be found to outweigh any concerns for eliminating prospective CLEC-to-CLEC competition.

1. Opponents have misstated the appropriate standard for demonstrating efficiencies.

In the Application, MCI WorldCom and Sprint detailed numerous efficiencies permitted by the merger. Application at 9-29, 76-110. Supported by affidavits and expert analysis, the Applicants demonstrated that these benefits are "tangible," "merger-specific," "sufficiently likely and verifiable," and that they will enhance the merged company's ability to compete, and "therefore result in lower prices, improved quality, enhanced service or new products" rather than reduced output.¹⁰⁴

¹⁰² Three LMDS licenses held by Sprint are included in the requested transfer of control. They are located in BTAs in Phoenix, AZ, Prescott, AZ, and Bremerton, WA. Because they were acquired by Sprint in the course of its MMDS acquisitions, they raise no new or significant policy issues. See Local Multipoint Distribution Service, 12 FCC Rcd 12545, ¶ 184 (1997) ("MMDS licensee eligibility to acquire LMDS spectrum in their service areas is consistent with [the Commission's] objective to increase competition").

¹⁰³ SBC/Ameritech Order ¶¶ 421-422 (noting also that market opening conditions therein imposed are expected to reduce costs of entry, "offsetting the loss of probable competition between the Applicants resulting from the merger"). In fact in both of the RBOC merger orders, purported benefits to local competition derived from hard-to-enforce conditions, rather than, as here, improved abilities and incentives to compete.

¹⁰⁴ See generally SBC/Ameritech Order ¶¶ 319-320; Bell Atlantic/NYNEX Order ¶¶ 168-176.

In the following section, the Applicants elaborate on the principal benefits to local competition to be derived from the merger.¹⁰⁵ Before turning to this, it is important to note that some of the comments misstate the appropriate standard of review for considering these benefits. Specifically, SBC alleges that it is not relevant that the merged entity can economically justify the deployment of local facilities more quickly and in more service areas than either company could achieve on its own. SBC asserts that the sole question is "whether the merged company would deploy more facilities than both companies would, each acting alone." SBC at 56. SBC then asserts that since the merger's efficiencies are based on consolidating local resources, they are not cognizable.

SBC's statement of the standard is simply wrong. Competition is promoted not only by increasing the number of competitive facilities, but also by the introduction of more efficient facilities-based competition at an earlier time in more service areas. As expressed by the Commission, "[w]e are committed to ensuring that residential local exchange competition becomes a reality sooner rather than later. One way this may occur more quickly is through combinations of complementary assets by emerging entrants. . . ."¹⁰⁶ This is precisely what the Applicants established by showing that the merged entity will be able to justify facilities-based

¹⁰⁵ The New York Attorney General specifically noted a desire for additional information on this point (NYAG at 8), and the following section provides this detail.

¹⁰⁶ Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Tele-Communications, Inc., to AT&T Corp., 14 FCC Rcd 3160, ¶ 48 (1999) ("AT&T/TCI Order") ("We find that the merger will create an entity that has incentives to expand its operations and provide facilities-based competition in the local exchange and exchange access markets, and will be able to do so more quickly than either party alone could." Id. ¶ 147.).

entry "more quickly" and "in more service areas simultaneously" than could MCI WorldCom and Sprint acting independently.

Accelerating facilities-based entry is not only a cognizable benefit of the merger, it implements a crucial congressional and Commission policy objective: prompt development of competition in the provision of local telephone services. See generally Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, ¶ 3 (1996) (opening the local exchange and exchange access markets to competitive entry is one of the principal goals of the 1996 Act's telephony provisions); see also id. ¶ 4 ("under the 1996 Act, the opening of one of the last monopoly bottleneck strongholds in telecommunications -- the local exchange and exchange access markets -- to competition is intended to pave the way for enhanced competition in all (emphasis in original) telecommunications markets, by allowing all providers to enter all markets"). Accelerating local competitive entry directly enhances consumer welfare. As Dr. Kelley has explained, competitive local entry will drive prices for ILEC services closer to economic cost (and thereby reduce the existing monopoly overcharges borne by consumers) and eventually will help shift ILEC incentives away from forestalling entry that makes use of their networks and toward encouraging such use. Kelley Decl. ¶¶ 90-92. Thus, although it is perhaps unsurprising that SBC would not see hastening the advent of facilities-based competition and the eventual erosion of its market power as a benefit of the merger, the Commission need not be confused.

2. The MMDS plans of the combined company are tangible, merger-specific benefits of the merger.

Opponents generally complain that "no MMDS-based venture has yet succeeded at providing broadband service" and that MMDS has struggled. GTE at 17; CWA at 55; TURN at

16. Opponents also allege that the Applicants' MMDS broadband entry plan is not specific to the merger.¹⁰⁷ See SBC at 52-54; GTE at 17; CWA at 55-57. The first concern is a reason to grant the merger; the second is simply incorrect.

The commenters are correct in stating that in the past MMDS has struggled and that the Applicants' plans for deploying MMDS-based services are not 100% assured of success. What SBC, GTE and CWA fail to observe is that the merger significantly changes the outlook for MMDS. Sprint and MCI WorldCom have powerful incentives to solve the MMDS challenges because MMDS promises relief from their continued dependence on ILECs for last-mile connectivity and on access to cable plant.¹⁰⁸ It is misleading for the commenters to assert that "no MMDS-based venture has yet succeeded at providing broadband service," since no entity has yet fully launched, or been permitted to fully launch, such service. As the Commission is well aware, the regulatory landscape for MMDS has changed dramatically in the past 18 months. It was not until September 1998 that the FCC authorized the use of MMDS for two-way services.¹⁰⁹ The

¹⁰⁷ GTE also claims that the MMDS synergies contemplated by the merger could be accomplished by a joint venture. GTE at 17. This argument is fully addressed, infra, Section III.B.4.

¹⁰⁸ And, as pointed out in the Application, the Commission has recognized this fundamental point. Application at 94 (citing FCC Chairman Kennard Releases Cable Staff Report on the State of the Broadband Industry, Report No. CS99-14, 1999 LEXIS 5099, at *30 (Oct. 13, 1999) ("MMDS systems complement these long distance carriers' (IXC) networks, for they provide the last-mile connection to businesses and residences. Once the networks and IXCs become fully integrated, the IXCs will have greater control of the end-to-end transmission and will be able to provide broadband services to subscribers more efficiently")).

¹⁰⁹ See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, 13 FCC Rcd 19112 (1998), recon., 14 FCC Rcd 12764 (1999), partially stayed, Order on Request for Stay, 2000 FCC LEXIS 530 (Feb. 3, 2000).

FCC has not yet opened the filing window for two-way applications. The lack of success in using MMDS for one-way video services has little predictive value for assessing the future success of using MMDS for two-way broadband access. In any event, the fact that the Applicants' ultimate success in this endeavor cannot be guaranteed in no way compromises the likelihood that they will in fact undertake the endeavor in the first instance and that they will be significantly better positioned to succeed as a combined firm.¹¹⁰

The merger will substantially improve the odds of success. As detailed by Dr. Kelley, there are substantial efficiencies that can be achieved by combining the two companies' MMDS and related assets. Synergies can be identified in virtually all aspects of the business, including network engineering, network construction and deployment (including tower sharing with Sprint PCS towers and MCI WorldCom backhauling facilities), equipment (both CPE and radio hub electronics), systems (billing and OSS), operations (savings in administration and maintenance, and scale efficiencies in transport and switching), spectrum coordination, marketing and advertising, among others. Dr. Kelley estimates that approximately \$531,125,000 savings could result from equipment synergies alone. Kelley Decl. ¶ 55.

SBC also challenges the merger-specific nature of these efficiencies by insisting that since each company made its MMDS acquisitions separately, each company must necessarily believe it already has enough bandwidth independently. SBC at 53-54. This point is simply wrong. The amount of bandwidth necessary for success is a two-fold issue: (1) how much spectrum in any

¹¹⁰ AT&T/TCI Order ¶¶ 146-148 (AT&T/TCI merger approved in light of findings that the applicants possessed the necessary assets, expertise and incentives to pursue their telephony-over-cable plans, and had expressed their commitment to implement that plan, notwithstanding protestations by opponents that ultimate success was uncertain).

given licensed area is sufficient to provide broadband services efficiently in that local area, and (2) how many licenses one needs to develop a nationwide network. The Application did not claim that the merger is needed to aggregate bandwidth within local service areas; in fact the Application showed that there is very little commonality of licensed service areas between MCI WorldCom and Sprint. This leads to the second factor: The two companies' MMDS properties are in fact located in different areas, enabling the two, when combined, to achieve considerably greater geographic coverage than either could on its own. Especially given the network effects of many broadband applications, this accelerated widespread coverage greatly enhances the likelihood of success of MMDS in any one of the locales.¹¹¹ And again, the fact that this was being pursued prior to the merger is by no means inconsistent with the fact that the merger will greatly improve the chances of success.

The benefits of the merger to promoting MMDS particularly are important when placed in context: the speed of broadband access deployment is not keeping pace with demand.¹¹² In fact,

¹¹¹ See Kelley Decl. ¶ 50 ("The merger will strengthen the network effects associated with ION by making it available to more customers more quickly through the MMDS facilities"); see also SBC/Ameritech Order ¶¶ 198, 207 (Nationwide advanced services such as Sprint ION and Covad's TeleSpeed Remote benefit from economies of scale and scope and network effects and exhibit "multi-market dependence."). Note that, as described herein, the Applicants' MMDS plan presents an opportunity to avoid dependence on the ILEC and thereby more readily benefit from the network effects and scale and scope economies.

¹¹² As SBC aptly states, broadband demand is "booming." SBC at 53; see also Wall Street Journal, Leslie Cauley, "For Phone Companies Wiring the Web, a Surprising Speed Bump" at B1 (Feb. 17, 2000) ("According to a report by Sanford C. Bernstein and McKinsey & Co., there were about 228,000 residential DSL customers at the end of 1999. By comparison, there were 1.62 million customers for the cable companies' high-speed Web access, delivered using powerful modems and upgraded power lines."). By the end of 2003, the Yankee Group predicts there will be nearly 8 million U.S. households with cable modem access and over 5 million U.S. households subscribing to DSL. See Wall

"[b]roadband [access] is being held back by supply."¹¹³ The Chief of the Commission's Cable Services Bureau recently noted that less than 2 million Internet users are using broadband services today -- less than 3% of all Internet users in North America.¹¹⁴ The Wall Street Journal reports that "the demand already exists among many consumers who are still waiting for broadband offerings to come to their hometowns."¹¹⁵

This market imbalance should be of special concern to the Commission, especially given its legislative mandate to foster advanced broadband capabilities. 47 U.S.C. § 706. Notably, the Commission has recognized that fixed wireless, including MMDS, may offer a "third pipe" solution to the expense and delays of constructing last mile broadband capabilities. In its most recent Advanced Services NOI, the Commission explains that

[w]ireless cable spectrum gives a new broadband last mile, and one allegedly cheaper to use than a cable-TV-based last mile, to companies that already possess most of the other necessary inputs for broadband. . . . It appears to us that the combination of wireless cable spectrum with existing switched telecommunications know-how opens the possibility of a significant, additional last mile to the residential customer.¹¹⁶

Street Journal, Stephanie N. Mehta & Kathy Chen, "U.S. Market For Broadband Is Barely Tapped" at B8 (Jan. 12, 2000).

¹¹³ See Wall Street Journal, Gary McWilliams, "BroadJump Speeds Broadband Installations" at B8 (Feb. 3, 2000)

¹¹⁴ Remarks by Deborah A. Lathen, Chief, Cable Services Bureau, Federal Communications Commission before the National Governors' Association at 1 (Feb. 27, 2000) (as prepared for delivery).

¹¹⁵ Wall Street Journal, Stephanie N. Mehta & Kathy Chen, "U.S. Market For Broadband Is Barely Tapped" at B8 (Jan. 12, 2000).

¹¹⁶ Inquiry Concerning Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable And Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant To Section 706 of the Telecommunications Act of 1996, CC Dkt. No. 98-146, 2000 FCC LEXIS 733, Attachment A ¶ 16 (rel. Feb. 18, 2000) (FCC 00-57); see also William E. Kennard, Chairman, FCC, "Wire Less Is More," An Address to the

The merger allows the Applicants to fulfill these promising predictions. MCI WorldCom is currently testing fixed wireless service in Jackson, Baton Rouge, and Memphis, while Sprint is providing, on a commercial basis, a first generation two-way Internet access service using MMDS spectrum in Phoenix. In addition, MCI WorldCom CEO Bernard J. Ebbers has stated that "[w]e will demonstrate our commitment to rural America by pledging that, within the year after the merger closes, we will accelerate deployment of broadband wireless in rural and underserved areas in the states of the Southeast, the Southwest, the Pacific Northwest and the Great Plains."¹¹⁷ This pledge should allay concerns as to where and how WorldCom will roll out its MMDS service.¹¹⁸

3. Additional benefits to the merger

The merger will also benefit consumers by enhancing the combined firms' local entry plans in other ways. As set forth in detail by Dr. Kelley, local wireline entry has proven quite difficult. Resale has been made uneconomic throughout the country by the wholesale rates ILECs have been allowed to charge. See Kelley Decl. ¶¶ 11, 38. And ILECs have generally not deployed the

Cellular Telecommunications Industry Association, New Orleans, Louisiana at 1 (Feb. 28, 2000) (as prepared for delivery) ("[Wireless has] the potential to be much more than a substitute. You are much more than an add-on, an adjunct, a niche-filler, whether to wireline or any other service.").

¹¹⁷ Remarks of Bernard J. Ebbers to the National Press Club (Jan. 12, 2000).

¹¹⁸ See Rainbow/PUSH at 14; Public Utility Law Project at 12; Inner City Press at 5-6; NYAG at 10-11 (expressing concerns as to whether the new WorldCom will use MMDS to serve residential customers).

systems necessary to permit CLECs to use UNE-P on a commercial scale. UNE-L is even more limited. Id. ¶¶ 39-40.¹¹⁹

Dr. Kelley examines the financial prospects of three local entry scenarios -- resale, UNE-P and UNE-L. Id. ¶¶ 72-80 & Appendix A. Even assuming all ILEC cooperation problems are solved, he demonstrates that entry into local mass markets is exceptionally difficult. He concludes that achieving scale is critical to successful entry, especially facilities-based entry (including UNE-L). Facilities-based entry, as he notes, optimally serves consumer interests because it allows CLECs to design features and functions free of the dictates of ILEC legacy equipment. For example, successful UNE-L entry hinges on the ability to achieve relatively high levels of market penetration. Kelley Decl. ¶¶ 77-78. The merger enables the combined firm to achieve this necessary scale. Combining their long distance customer base as a key springboard for marketing local services, the two firms can offer local service on an earlier schedule in a larger number of wire centers and in smaller wire centers than they could otherwise serve alone. "The combination thus would greatly expand the availability of a competitive alternative." Id. ¶ 79. It would, in turn, make it easier for smaller CLECs to enter efficiently without first achieving the same scale, since, as discussed, a third facilities-based competitor creates more wholesome incentives for all facilities-based firms to deal with smaller firms. And even for entry by UNE-P or UNE-L, the new WorldCom, having negotiated interconnection arrangements accessible to smaller CLECs pursuant to Sections 251 and 252, will have served as an "icebreaker" for these smaller firms.

¹¹⁹ The Commission will need once again to address the availability of ILEC provisioning of collocation space on commercially feasible terms and conditions in light of the recent Court of Appeals' decision in GTE Service Corp. v. FCC, No. 99-1176 (consol.) (Mar. 17, 2000).

4. The merger efficiencies cannot be achieved via contract.

GTE challenges the merger efficiencies arising from the ability of the merged entity to combine traffic and/or otherwise use facilities and services more efficiently than the merging firms can separately by claiming that these efficiencies could be achieved via arms-length contractual agreements absent the merger.¹²⁰ GTE at 20-21; see also Lundgren at 6. But it is simply not instructive to select one or two of a large number of joint activities and argue that these could be achieved by contract. Dissected to the extreme, all activities arranged within a corporation can theoretically be arranged by contract. The question is whether there is a reasonable basis for believing that integration of the activities is more efficient, because transaction costs, such as strategic behavior by one or both of the parties, will be avoided.

Here, integration is clearly more efficient. Indeed, as described by Dr. Kelley, "the differing incentives of the firms and the high transactions costs of executing and monitoring these contracts would be sufficient to make cooperation unlikely in the absence of the planned merger." Kelley Decl. ¶ 82. For example, MCI WorldCom is unlikely to be interested in making its collocation space available to a direct competitor at marginal cost, and Sprint PCS is similarly unlikely to be interested in making its tower facilities available for competing MMDS services. Moreover, the high degree of technological uncertainty involved in developing MMDS raises resource allocation issues that require decisions about the use of a widely disparate set of assets owned by the two companies, as well as decisions about technology choices (e.g., second

¹²⁰ SBC makes a similar argument with regard to the collocation efficiencies Sprint ION will realize from the merger. SBC at 57. Reliance on merely a contractual relationship to accomplish this efficiency is fraught with the same risks and transactions costs described below that make reliance on contracts untenable for the efficiencies challenged by GTE.

generation two-way broadband MMDS technology and CPE design) -- decisions that would be difficult if not impossible to sort out in advance through contracts or a joint venture. See id. ¶ 83. As stated by Dr. Kelley, "[w]ithin a single governance structure, these decisions can be made to maximize the interests of the merged firm rather than the divergent interests of two firms and a joint venture." Id.

Misciting a selective quotation from the Rehberger/Grothe Affidavit (attached as Appendix E to the Application), GTE tries to argue that the Applicants have conceded this point. GTE at 21. GTE's assertion that arms-length contracts would allow the parties to achieve the same efficiencies absent the merger ignores the fact that:

while in the absence of the proposed merger Sprint would be reluctant to enter into an extensive contractual relationship with (and corresponding dependence upon) a competitor even when that contract had clear efficiency benefits, the downside risk of such an arrangement is significantly reduced by the merger agreement. For example, there is reduced risk that Sprint will bear upfront costs to rearrange its network only to have to bear such costs again in the future if the contract is ended.¹²¹

Thus, because the merger removes the substantial "friction" that has otherwise served to inhibit such arrangements on an arms length basis, the sharing of facilities and collocation space enabled by the merger is a clear and direct benefit of the transaction.

IV. The Merger Serves The Public Interest By Improving The Combined Firm's Ability To Offer Packages Of Services.

In the Application, the merger parties described the complementarity of their combined assets, enabling the new WorldCom to compete for integrated packages of services, including "all distance" service. The Application explained that while the line-of-business restrictions of the

¹²¹ Rehberger/Grothe Aff. ¶ 14.

Modification of Final Judgment¹²² remained in place, along with state laws guaranteeing RBOCs legal local monopolies, a clear dividing line between local services and interLATA services held firm. With the passage of the 1996 Act mapping the dismantling of both sets of barriers, end-to-end service offerings from single sources become possible. The Application also described the strong consumer demand, especially in the mass market segment, for one-stop-shopping.

The fact that some consumers value the availability of all-distance and other packages is not seriously disputed by any commenter. The Commission itself has numerous times observed this basic market fact. See Bell Atlantic/NYNEX Order ¶ 52 (stating expectation of possible future product market comprising "the bundling of local exchange and exchange access services with long distance services").¹²³ And the commenters themselves acknowledge (as they must, given their past advocacy) that "[c]onsumers do wish to purchase bundled service packages that include local and long distance service." SBC at 27. Instead, they exaggerate and mischaracterize the Application's discussion of consumers' desire for "all-distance" in order to set up a target they feel they can hit.

As is evident from the 48 pages of discussion dedicated to long distance competition analysis, Application at 29-76, (as well as the extensive analysis found in the Besen/Brenner First Declaration), the merger parties did not insist that the FCC formally analyze the public interest

¹²² United States v. AT&T Co., 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom, Maryland v. U.S., 460 U.S. 1001 (1983).

¹²³ See New York Order ¶ 428 (referring to BOCs' "unique ability to introduce vertical service packages, i.e., long distance and other telecommunications services bundled with local exchange service"); Petition of U S West Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, 14 FCC Rcd 16252, ¶ 43 (1999); Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, 14 FCC Rcd 16299, ¶ 24 (1999).

effects of the merger based only upon an all-distance market. Rather, along with offering a textbook analysis of current market participants and performance in the two long distance markets that the FCC has previously identified (mass markets and large business), the Application brought to bear the essential additional perspective of where market trends are leading us in the near future. Perhaps the Commission could fairly consider today's snapshot of vigorous long distance competition to the exclusion of reviewing any of the trend predictions of industry experts, financial analysts, or technical specialists, but this would leave the analysis incomplete. Merger analysis, after all, is a predictive exercise, and if it is to be comprehensive, must include estimations of what the market in which the combined firm will operate will look like in the longer term as well as the shorter term.¹²⁴

The plain fact is that the world of long distance services is radically changing. MCI WorldCom and Sprint did not simply dream this up for purposes of advocacy: it is real and widely recognized.¹²⁵ Within the two-year time frame suggested by the Merger Guidelines, the new WorldCom will be competing against some RBOCs for local services, long distance services, and packages of these services. As explained in Section II.E., supra, while RBOC entry may not be completed in every state within that timeframe, it will predictably have nationwide effects. In

¹²⁴ Regulatory agencies are in fact tasked with exercising their expertise in the industries that they regulate to make precisely these predictive judgments. See, e.g., FCC v. National Citizens Comm. for Broad., 436 U.S. 775, 814 (1978) (noting that a predictive judgment as to the direction of the future public interest necessarily is based on the expert knowledge of the agency) (quoting FPC v. Transcontinental Gas Pipeline Corp., 365 U.S. 1, 29 (1961)).

¹²⁵ See, e.g., Boston Globe, Berge Ayvazian, "Telecom Merger to Set a Standard" at C4 (Mar. 7, 2000) ("To say the [MCI WorldCom-Sprint] merger gives the combined company WorldCom too much control over long distance just isn't relevant in today's market, and the merger should be viewed in this light").

addition, long distance communications are changing their traditional patterns, with greater amounts originating on wireless phones, e-mails replacing facsimile and telephone calls, etc. Unsurprisingly, most facilities-based providers of traditional long distance services have demonstrated that, given these trends, they are not content to remain solely within that boundary: they are integrating into other fields through geographical and/or vertical expansions. In addition to the most obvious example of AT&T/BT/TCI/MediaOne, Qwest is integrating into local with its acquisition of U S West and its strategic alliances with BellSouth, Covad, and Rhythms NetConnections;¹²⁶ Global Crossing and Frontier have merged to expand their local and literally worldwide reach and are rapidly developing their Internet business (GlobalCenter);¹²⁷ Broadwing has prepared itself to serve local and Internet services;¹²⁸ and Teleglobe/Excel/Bell Canada Enterprises has achieved local, video, broadband as well as international reach. The ILECs have already demonstrated the value of "all-distance" as well. Both GTE and SNET offer such packages, and upon receiving Section 271 authority in New York, Bell Atlantic included among its initial service offerings there a package of local and toll minutes. Citing a "national study" indicating a strong preference for service packages among small and medium-sized businesses,

¹²⁶ "As voice, data and image converge, Qwest is a company positioned to take advantage of the great economic opportunities in history." About Qwest, "A New Kind of Company" at 2 (visited Mar. 12, 2000) <qwest.com/aboutqwest/facts.html>.

¹²⁷ Global Crossing/Frontier is "offer[ing] customers the convenience of 'one-stop shopping' on an open and equal access basis connecting multiple destinations worldwide." Global Crossing, "Products & Services" at 1 (visited Mar. 12, 2000) <www.globalcrossing.com/prodserv.asp>.

¹²⁸ "With one company and one bill for Dial-Up Internet, DSL, long distance, and International Calling, Broadwing is the obvious choice to keep you connected at home." Broadwing, "For Your Home" at 1 (visited Mar. 12, 2000) <www.broadwing.com/library/templates/brProducts.asp?watid=60&branch=Products>.

Bell Atlantic recently announced the availability in New York of Business Link Solutions, a local-long distance package.¹²⁹ Regardless of whether one believes that long distance voice service may disappear altogether as a stand alone service,¹³⁰ it is certainly undisputed that competition for at least some set of customers is evolving to the provision of packages of services, including "all-distance" services.¹³¹

One need only consider the evolution of wireless mobile services to find this pattern. Cellular service plans once offered only discrete charges for local minutes and long distance minutes. Indeed, the provision of long distance services from wireless phones was heavily constrained by the line-of-business restriction contained in the Modification of Final Judgment,¹³² requiring the customers of BOC cellular affiliates to select unaffiliated long distance providers for those services. In 1995, the long distance prohibition was waived for wireless services under certain conditions, enabling all mobile service providers to offer both local and long distance

¹²⁹ See News Release, "Bell Atlantic Creates 'One Singular Sensation' for New York Businesses" at 3 (Mar. 14, 2000) <www.ba.com/proactive/newsroom/release.vtml?id=21043>.

¹³⁰ See, e.g., BCE, "The Death of Distance" ("While the Internet and other advances are changing lives, they have utterly transformed the communications industry, which is scrambling to keep up with emerging technologies on one hand and customer demands on the other. The so-called 'death of distance,' which reflects the now negligible cost of communicating over vast distances, is just one example of this sea-change.") <www.bce.ca/en/lines/markets>.

¹³¹ As stated succinctly by BellSouth, "our competition is no longer AT&T, MCI, Sprint. We now compete with Yahoo, Mindspring, AOL." NY Times, Jane L. Levere, "Recasting BellSouth From Telephone Company to High-Technology Communications Provider" at C8 (Mar. 8, 2000) (describing new advertising campaign designed to extend BellSouth brand name across a range of products and services).

¹³² United States v. AT&T Co., 552 F. Supp. 131 (D.D.C. 1982).

services.¹³³ The passage of the 1996 Act removed the remaining constraints. See Sections 271(b)(3) (exception to interLATA prohibitions); 332(c)(8) (removal of general equal access obligations for all CMRS providers). Over this same period of time, PCS spectrum was licensed and PCS systems were built and began offering service, reflecting substantial new entry into markets historically served by only two firms. Within two years of these events, consumers began to benefit from offers of bundles of minutes to be used for any distance they desire.¹³⁴ These plans are plainly attractive to some customers, although the diverse pricing structures currently available from commercial mobile radio service providers (such as access-only rates, message billing rates, etc.) demonstrate that different customers respond to different types of plans. But the lesson is clear: packages of local and long distance are among the most attractive plans, and are a natural consequence of removing barriers between local and long distance providers.¹³⁵

While the static view of traditional long distance markets shows why the merger is not contrary to the public interest, understanding the likely shape of future trends serves not merely to confirm this: it demonstrates how this merger affirmatively serves the public interest. The merger

¹³³ United States v. Western Elec. Co., 890 F. Supp. 1 (1995).

¹³⁴ The one-rate plans offered by such companies as Sprint PCS, AT&T and others are made available notwithstanding the fact that these companies face different costs to terminate different types of wireless-originated calls (e.g., calls that terminate on the wireline network locally, long distance calls terminating on the landline network, or calls that terminate on other wireless phones).

¹³⁵ The growth of wireless and the substantial growth of long distance minutes (voice and data both) originating on wireless networks also demonstrates the decreasing relevance of the traditional, stand-alone, long distance switched voice market. Application at 95. The market shares cited by the Applicants for long distance are taken from Commission reports and do not include long distance traffic originating over CMRS networks.

will strengthen the combined firm's ability to meet consumer demand for packages of services, i.e., some combination of long distance, local, broadband, and (narrowband) wireless. In addition to the transactions undertaken by long distance carriers described above, other companies are gearing up to provide some combination of these services. AT&T and Cablevision Systems Corp. plan to offer packages of telephone and cable television service to customers in New York, New Jersey, and Connecticut beginning in the spring of 2000.¹³⁶ U S West recently announced its "U S West Total Package," a bundle of telephone, wireless and Internet service that "lets customers use their wireless minutes to call long-distance."¹³⁷ GTE offers its "GTE Unlimited" bundle of local, long distance, Internet access, wireless services, paging, and call management services in seven states where it has attracted more than 300,000 customers.¹³⁸ SBC has announced its "Project Pronto," a \$6 billion initiative designed "to allow SBC to provide end-to-end advanced voice, data and video services on one of the most sophisticated, efficient, flexible and scalable networks in the industry."¹³⁹ Plainly, these firms have strategies that appear to reflect a common view about where the markets are taking us. (In fact, it is generally these firms that have opted to try to delay this merger.) Other firms are plainly looking to address the future consumer demand through alternative, niche approaches. Some firms are seeking to focus on certain geographic locales;

¹³⁶ Business Wire, "AT&T and Cablevision to Create High-Value Telecommunications Bundle for New York Metropolitan Area Customers -- Consumers to Benefit From Cross-Promotion of Services" (Feb. 23, 2000).

¹³⁷ Telephony, Chrissy Moch, "U S West Bundles Up" at 9 (Feb. 14, 2000).

¹³⁸ News Release, "GTE Communications Corporation, the Nation's Largest Residential CLEC, Launches Full Bundle of Telecommunications Services in Kentucky" (Feb. 9, 2000).

¹³⁹ Project Pronto at 1.